

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court  
Southern District of Texas**ENTERED**

June 02, 2022

Nathan Ochsner, Clerk

Jessica Stark,

Plaintiff,

versus

ABC Pediatric Clinic, P.A., et. al,

Defendant.

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Civil Action H-21-3822

## Order Denying Dismissal

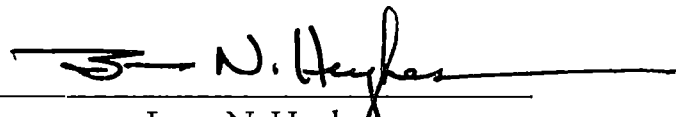
1. Jessica Stark sued ABC Pediatric Clinic, P.A., for: (a) medicaid fraud retaliation; (b) breach of contract; and (c) violating the Fair Labor Standards Act. The defendants counterclaimed that Stark violated the Computer Fraud and Abuse Act and Texas law by harmfully accessing the clinic's computer without authorization. Stark has moved to dismiss this claim.
2. To state a violation of the Computer Fraud and Abuse Act, ABC Pediatric must plead that Stark: (a) intentionally accessed a protected computer without authorization; and (b) damages exceeded \$5,000 in losses as a result.<sup>1</sup>
3. ABC Pediatric pleaded that Stark changed the password on the clinic's computer without authorization. It says that on May 20, 2021, Stark was told not to return to the office. The same day, it says, Stark came to the office and reset the password. Because Stark changed the password, it says that it had no access to the computer for 7-10 days. It says it was unable to timely process health insurance reimbursements. It says it hired a third-party vendor to fix the issue. It pleaded that this aggregated cost exceeds \$5,000.

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<sup>1</sup> 18 U.S.C. §§ 1030(a)(2)(A) and (C), 1030(a)(4), 1030(a)(5)(C).

4. Stark says she was authorized to change the password. On May 20, 2019, at 4:31 p.m., ABC Pediatric told her not to continue coming to the clinic. It is unclear at what time she changed the password. If she changed the password after she was told to leave, it would be unauthorized. If she changed the password beforehand, she may have had authorization as an employee of the clinic. At this stage, it is a fact issue resolved in favor of ABC Pediatric as the nonmoving party. It is adequately pleaded.
5. Stark moved to dismiss ABC Pediatric's state law claim for unauthorized access. Texas law allows a cause of action for harmful access by a computer.<sup>2</sup> It pleaded that Stark changed the password without authorization. It pleaded that Stark damaged the clinic's business because without the password, it could not access the computer. This claim is remains.
6. Because the unauthorized computer access claims are adequately pleaded and survive, Jessica Stark's, motion to dismiss is denied. (7) (11)

Signed on June 2, 2022, at Houston, Texas.

  
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Lynn N. Hughes  
United States District Judge

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<sup>2</sup> Texas Penal Code Section 33.02(a).